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TAGS: EINV EFIN ETRD ELAB KTDB PGOV USTR OPIC PO
SUBJECT: PORTUGAL'S 2008 INVESTMENT CLIMATE STATEMENT

REF: STATE 158802

¶1. The following is Portugal's submission for the 2008 Investment Climate Statement:

¶A. Openness to Foreign Investment

Portugal offers a favorable investment climate for foreign capital, both in the near and long term. Its economy has become increasingly diversified and service-based since the country joined the European Community in 1986. On January 1, 2002, Portugal adopted the euro as its official currency, further integrating itself with the European Union's financial and economic policies. Prime Minister Jose Socrates, who took office in 2005, has made opening Portugal's economy to foreign investment a key priority.

Government Promotion Agencies: The agency leading Portugal's economic development policy is AICEP (the Portuguese Agency for Foreign Investment and Commerce). AICEP is a public company that was created in 2007 following the merger of API (the Portuguese Investment Agency) and ICEP (the Portuguese Foreign Business Institute). AICEP is responsible for the promotion of global Portuguese trademarks, exports of goods and services, and attracting foreign direct investment (FDI). It serves as the point of contact for investors with projects over 25 million euros or companies with a consolidated turnover of more than 75 million euros. For foreign investments not meeting these requirements, AICEP will make a preliminary analysis and direct the investor to assistance agencies such as INOVCAPITAL, which offers technology transfer and incubator programs for small- and medium-sized enterprises (SMEs), or the Institute for the Support of SMEs (IAPMEI) which provides technical and financial support. AICEP also publishes a monthly newsletter entitled "Portugal Global" which provides information on the state of play of FDI in Portugal. This newsletter is available in Portuguese and in English, on the website:
http://www.portugalglobal.pt/ CmsAPI/AICEP/newsletter EN.pdf

Government Policies - General: According to the Bank of Portugal, foreign direct investment is defined as an act or contract that obtains or increases enduring economic links with an existing Portuguese institution or one to be formed. Foreign direct investment is thus all investment made by a non-resident of, at least, 10% of a resident company's equity, provided that the direct investor also plays a role in the company's decision making.

Foreigners are permitted to establish themselves in all economic sectors open to private enterprise. Currently, however, Portuguese government approval is required for

non-EU investment in the following sectors: defense, water management, public service telecommunications operators, railways, and maritime transportation. Also, Portugal restricts non-EU investment in regular air transport to 49 percent.

Finance/Insurance: Investors wishing to establish new credit institutions or finance companies, acquire a controlling interest in such financial firms, and/or establish a subsidiary must have authorization from the Bank of Portugal (for EU firms) or the Ministry of Finance (for non-EU firms). In both cases, the authorities carefully consider the proposed transaction, but in the case of non-EU firms, the Ministry of Finance especially considers the impact on the efficiency of the financial system and the internationalization of the economy. Non-EU insurance companies seeking to establish an agency in Portugal must post a special deposit and financial guarantee and must have been authorized for such activity by the Ministry of Finance for at least five years.

Foreign Workers: Non-Portuguese EU workers must obtain a residence card for EU nationals but are not required to have work permits. Non-EU workers are required to have both a residence visa and a work permit. According to Decree-law 34/2003, a foreign worker can be granted a permit for work that is essential to the national economy, or if the worker possesses highly qualified competencies or his/her work is of relevant scientific interest to the country.

Structural and Cohesion Funds: For the 2007-2013 programming period, Portugal has been allocated 21.5 billion euros of Structural and Cohesion Funds financing under the European Union's Convergence, Regional Competitiveness and Employment, and Territorial Cooperation program. Portugal plans to use

the funds to develop a skilled workforce, to promote sustainable growth, to guarantee social cohesion, to ensure territorial development, and to improve governance efficiency. For more information visit:
http://ec.europa.eu/regional policy/ atlas2007/fiche/pt en.pdf

¶B. Conversion and Transfer Policies

Portugal maintains no current or capital account restrictions. On January 1, 1999, Portugal and ten other European countries formed the European Monetary Union. On January 1, 2002, Portugal adopted the euro as its official currency, replacing the Portuguese escudo which is no longer in circulation. Currently, there are fifteen member-states that use the euro.

¶C. Expropriation and Compensation

There have been no cases of expropriation of foreign assets or companies in Portugal in recent history, nor is there concern for future expropriation.

¶D. Dispute Settlement

The Portuguese legal system is slow and deliberate, with many cases taking years to resolve. In an effort to address this problem, the government introduced reforms in litigation procedures and public administration in 2007. These reforms are intended to reduce delays in the justice system and improve its effectiveness by reorganizing the court system and redefining the division of the court's jurisdiction. The reform also establishes new rules for management within the judicial system.

¶E. Performance Requirements and Incentives

As an incentive for both national and foreign companies, resident entities or branches of non-resident entities whose main activity is of a commercial, industrial or agricultural

nature are subject to a corporate income tax (IRC) rate of 25%, and a set municipal surcharge of no greater than 2.5% of taxable profit. Rates vary from municipality to municipality. Other tax regimes are in place for the country's two autonomous island regions: the Azores and Madeira.

The Portuguese Government also offers several incentive packages tailored to investors' needs and capital based on industry, proposed size of investment and project sustainability. Details about the programs are available on the AICEP website: http://www.investinportugal.pt

For example, under Portugal's investment incentive regime, AICEP is empowered to negotiate a tailored incentives package for large investment projects on a case-by-case basis, including tax cuts and subsidized or interest-free loans, as well as cash grants. Large-scale investment projects are all investment projects exceeding 25 million euros, within a period of three years, or those promoted by a company, or group of companies with a total turnover greater than 75 million euros. The goal of the program is to leverage investments for proposed projects that support the government's economic development goals. AICEP has designed the program to address Portugal's long-term competitiveness issues, including human resources, and to promote Portugal's own brands and patents in the industrial, energy, construction, transport, tourism, commerce and services sectors.

For more information:
http://www.planotecnologico.pt/
default.aspx?idLang=2&Site=planotecnologico

¶F. Right to Private Ownership and Establishment
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Private Ownership/Enterprise: Private ownership is limited to 49 percent in the following sectors: basic sanitation (except waste treatment), international air transport, railways, ports, arms and weapons manufacture, and airports. The government requires private firms to obtain concessions, contracts, and licenses to operate in a number of sectors (public service television, waste distribution, waste treatment), but grants these on a non-discriminatory basis. Foreign firms have the right to establish themselves in all economic sectors open to private enterprise. Foreign investments affecting public health, public order or security, or relating to the arms industry, require approval of the competent authorities.

Competitive Equality: Law No.18/2003, of June 6, 2003, governs protection and promotion of competition in Portugal. It specifically outlaws collusion between companies to fix prices, limit supplies, share markets or sources of supply, discriminate in transactions, or force unrelated obligations on other parties. Similar prohibitions apply to any company or group with a dominant market position. The law also requires prior government notification of mergers or acquisitions which would serve to give one company more than 30 percent market share in one sector or among entities which had total sales in excess of 150 million euros in the preceding financial year. The Competition Authority has 60 days to determine if the merger or acquisition can proceed. The European Commission may claim authority on cross-border competition issues or those involving entities large enough to have a significant EU market share.

Privatization Program: Portugal engaged in a wide-ranging privatization program that sold 100 enterprises and generated approximately $14 billion in revenues between 1996-2006. Privatization involves the sale of government shares in state-owned companies, typically in a series of share offerings. These share offerings often include private transactions, usually to attract a "strategic partner" as an equity holder, and public offerings.

Major privatizations in recent years included sales of interest in Portugal Telecom (telecommunications), EDP (electricity), REN (Electricity Transmission System Operator) and GALP Energia (petroleum refining and marketing, natural gas distribution). TAP Airlines is expected to be privatized in the near future.

¶G. Protection of Property Rights

The government adopted the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and provisions of General Agreement on Tariffs and Trade (GATT) in 2003. Portuguese legislation for the protection of intellectual property rights has been consistent with WTO rules and EU directives since 2004.

Portugal is a participant in the E-MAGE project, an Internet based service, which provides multilingual access to databases of trademarks and industrial designs. This international cooperation helps customs authorities prevent sales of counterfeit goods. Other countries involved include France, Austria, Hungary and Spain.

Trademark Protection: Portugal is a member of the International Union for the Protection of Industrial Property (WIPO) and a party to the Madrid Agreement on International Registration of Trademarks and Prevention of the Use of False Origins. Portugal's current trademark law entered into force on June 1, 1995. The law, however, is not considered to be entirely consistent with TRIPS.

Copyright Protection: Portugal has transposed the EU information society and protection of databases directives into national legislation (Decree-Law 50/2004 and 112/2000, respectively). However, software piracy remains a problem.

Patent Protection: Currently, Portugal's patent protection is governed by the Code of Industrial Property that went into effect on June 1, 1995. In 1996, new legislation was passed to extend the life of then-valid patents to 20 years, consistent with the provisions of TRIPS. A new industrial property code, designed to bring Portugal into full conformity with EU and international norms, came into effect at the beginning of 2003.

Portugal grants health (FDA-equivalent) approval to market new drug products without crosschecking for existing products with unexpired patent protection already in the market. This forces companies to pursue redress through the court system, an expensive and time-consuming process. U.S. pharmaceutical companies have brought a number of cases before Portuguese tribunals for the violation of patent rights by Portuguese companies. One U.S.-owned pharmaceutical company has won five cases and has several more pending.

¶H. Transparency of Regulatory System

In the recent past, businesses frequently complained about red tape with regards to registering companies, filing taxes, receiving value-added tax refunds and importing materials.

Decision-making tended to be centralized and obtaining government approvals/permits can be time-consuming and costly.

The Ministry of Economy has promoted various initiatives to improve the situation. In 2007, it worked with the Ministry of Justice to launch the "Cutting Red Tape" website, a repository of information for all measures taken since 2005 to reduce bureaucracy in the incorporation, registration, certification, liquidation, dissolution and merging of businesses in Portugal. Other initiatives include the "Empresa na Hora" (On-the-Spot Firm) which allows for the incorporation of companies in less than one hour at Corporate

Formalities Centers and Business Registration Offices; and other services such as online company incorporation, labor mediation, bilingual commercial registration, and patents and trademarks. Since 2005, a total of 14,471 companies have been incorporated under the "Empresa na Hora" program, while over 450 companies have been incorporated using the online service. More information can be found at the "Cutting Red Tape" website: http://www.cuttingredtape.mj.pt/CuttingRedTape/index.htm

¶I. Efficient Capital Markets and Portfolio Investment
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One result of Portugal's participation in the European Monetary Union is the country's increasing integration into a European-wide financial market. As a member of the Euro-zone, Portugal offers low exchange rate risk for foreign investors, interest rates comparable to other EU countries and a greater availability of credit. In addition to bank lending, the private sector has access to a variety of credit instruments, including bonds. Legal, regulatory, and accounting systems are consistent with international norms.

The Portuguese capital markets code (the CVM) came into effect on March 1, 2000, and has rationalized and streamlined Portuguese capital markets legislation. The Lisbon stock market is part of Euronext, which also includes the Paris, Brussels and Amsterdam markets.

Portugal has about 50 banking institutions. The largest five bank groups, however, account for eighty percent of the sector's total assets. The country's largest bank, Caixa Geral de Depositos (CGD), is controlled by the Portuguese government. Despite recent economic challenges, the financial sector continues to perform well.

In addition to banks and stock markets, Portugal has taken specific steps to ensure that the financial needs of small and medium sized enterprises (SMEs) are met. Portugal's Institute for Supporting Small and Medium-Sized Enterprises and Investment (IAPMEI) has a program of mutual guarantees so that SMEs do not have to use their assets or those of their shareholders to collateralize debt. The companies pay an initial evaluation fee and an annual fee equal to 0.75-3.00 percent of the guarantee. IAPMEI has also supported the creation of venture capital funds and venture capital companies, which will channel capital to SMEs.

Steps have been taken to improve the educational and vocational training programs in Portugal, in hopes of increasing skill levels and productivity of the workforce, which generally lag behind the EU-15 average, and expanding professional opportunities.

¶J. Political Violence

There have been no incidents involving politically motivated damage to projects and/or installations. Potentially destructive civil disturbances are not likely.

¶K. Corruption

Corruption plays a limited role in Portugal's business culture. Although U.S. firms occasionally encounter limited degrees of corruption in the course of doing business in Portugal, they do not identify corruption as an obstacle to foreign direct investment. In Transparency International's 2007 Corruption Perceptions Index, Portugal ranked 29 out of 179 countries considered (listed from least to most corrupt). The U.S. was ranked 20. Portugal has ratified the OECD Anti-bribery Convention and recently passed legislation to bring its criminal code in compliance with the Convention. Tax evasion remains a problem for the government, which has implemented several initiatives to improve collection rates. The Socrates administration is undertaking steps to address

the limited degrees of corruption that businesses, both U.S. and other, face in Portugal.

¶L. Bilateral Investment Agreements
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http://www.investinportugal.pt/ MCMSAPI/HomePage

Listing of International Treaties: http://www.gddc.pt/siii/paises-organizacoes.asp

¶M. OPIC and Other Investment Insurance Programs
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Portugal is a country with low political risk, and the potential for significant OPIC insurance programs in Portugal is limited. Portugal is a member of the Multinational Investment Guarantee Authority (MIGA) of the World Bank.

¶N. Labor

A package of labor reform laws took effect in 2003 permitting greater geographic and functional mobility for employers. The labor code limits the role of unions and makes it more difficult for workers to strike. It also addresses absenteeism and fraudulent leave. However, low productivity and difficulty in firing workers continue to hamper Portugal's ability to attract foreign investment.

Labor strikes and work stoppages in Portugal, as in much of Europe, are more common than in the United States. Most strikes, however, are of short duration. In the past two years, work stoppages have been more common among public sector workers, including the transportation sector, than in the private sector.

Portugal is a member of the International Labor Organization (ILO) and adheres to the ILO Conventions Protecting Labor Rights. Portugal ratified ILO Convention 138, which establishes a minimum employment age of 15 for all economic sectors. As of January 1, 1997, the minimum working age in Portugal is 16, thereby exceeding the ILO norm.

Unemployment: Portugal's 2007 unemployment rate was 8.0%, above the EU-27 average of 7.0%. The unemployment rate is expected to level off in 2008 before improving slightly over the coming years The outlook for job creation, although low, is expected to improve as government educational and vocational training programs designed to strengthen labor productivity take effect.

¶O. Foreign-Trade Zones/Free Ports

Portugal has two foreign trade zones (FTZ)/free ports in the island autonomous regions of Madeira and the Azores. These foreign trade zones/free ports were authorized in conformity with EU rules or incentives granted to member states. Industrial and commercial activities, international service activities, trust and trust management companies, and offshore financial branches are all eligible. Companies established in the foreign trade zones enjoy import/export-related benefits, financial incentives, tax incentives for investors and tax incentives for companies.

The Madeira FTZ has approximately 6500 registered companies. Under the terms of Portugal's agreements with the EU, companies in the Madeira FTZ can take full advantage of the tax incentives provided until December 2011, when those incentives will begin to be phased out.
http://www.madeira-management.com/aboutmadeira/introduction.html

¶P. Foreign Direct Investment flows into Portugal
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http://www.apinvest.pt/MCMSAPI/HomePage/PortugalToday/PortugalAdvantages/

¶Q. Portuguese Trade with the U.S.
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http://www.census.gov/foreign-trade/balance/c 4710.html

¶R. Major Foreign Direct Investors

Selected Major Foreign Investors in Portugal:
http://www.apinvest.pt/MCMSAPI/
HomePage/PortugalToday/FDI TrackRecord/

¶S. Web Resources

Bank of Portugal:
http://www.bancoportugal.pt

Portuguese Agency for Foreign Investment and Commerce:
http://www.icep.pt/CmsAPI/AICEP/index.html

"Cutting Red Tape":
http://www.cuttingredtape.mj.pt/ CuttingRedTape/index.htm

Empresa na Hora (On-the-Spot Firm):
http://www.empresanahora.pt/ ENH/sections/EN homepage

PRIME (Incentive Program for Economic Modernization):
http://www.prime.min-economia.pt

EUROSTAT (Statistical Office of the European Communities):
http://ec.europa.eu/eurostat

U.S. Census Bureau:
http://www.census.gov

Technological Plan:
http://www.planotecnologico.pt/
default.aspx?idLang=2&Site=planotecnologico

The "Cutting Red Tape" Investment Incentive Program:
www.cuttingredtape.mj.pt

Portuguese Government:
http://www.portugal.gov.pt

American Chamber of Commerce in Lisbon:
http://www-cca.cliente.imediata.pt/ html/main.htm

IAPMEI (Institute for S.M.E. Support and Investment):
http://www.iapmei.pt

INPI (Portuguese Patent and Trademark Office):
http://www.inpi.pt

Trade and Competition Directorate-General:
http://www.dgcc.pt

US Commercial Service in Portugal:
http://www.buyusa.gov/portugal/en
Stephenson